

712

2015-2016 Regular Sessions

I N A S S E M B L Y

January 7, 2015

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Ways and Means

AN ACT to amend the tax law, in relation to the provision of certain
financial services to debt evading foreign states

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The tax law is amended by adding a new article 15 to read
2 as follows:

3 ARTICLE 15
4 TAX ON THE PROVISION OF CERTAIN FINANCIAL SERVICES TO DEBT EVADING
5 FOREIGN STATES

6 SECTION 330. DEFINITIONS.

7 331. IMPOSITION OF TAX.

8 332. REPORTS AND ADDITIONAL MEASURES.

9 S 330. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
10 HAVE THE FOLLOWING MEANINGS:

11 1. "AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE" MEANS ANY ENTITY:

12 (A) WHICH IS A SEPARATE LEGAL PERSON, CORPORATE OR OTHERWISE, AND

13 (B) WHICH IS AN ORGAN OF A FOREIGN STATE OR A PROVINCE OR POLITICAL
14 SUBDIVISION THEREOF, OR A MAJORITY OF WHOSE SHARES OR OTHER OWNERSHIP
15 INTEREST IS OWNED BY A FOREIGN STATE OR A PROVINCE OR POLITICAL SUBDIVI-
16 SION THEREOF, AND

17 (C) WHICH IS NEITHER A CITIZEN OF A STATE OF THE UNITED STATES, NOR
18 CREATED UNDER THE LAWS OF ANY THIRD COUNTRY.

19 2. "FINAL JUDGMENT" MEANS ANY JUDGMENT THAT IS NO LONGER ELIGIBLE TO
20 BE APPEALED TO ANY COURT.

21 3. "FINANCIAL INSTITUTION" MEANS THE OFFICE OR BRANCH IN NEW YORK OF
22 ANY BANK OR BANKING ORGANIZATION, WHETHER FOREIGN OR DOMESTIC, THAT IS
23 REGULATED BY THE DEPARTMENT OF FINANCIAL SERVICES OF THIS STATE OR ANY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 AGENCY OR DEPARTMENT OF THE UNITED STATES, OR ANY TRUST COMPANY OR ANY
2 OTHER PROVIDER OF PAYING AGENT SERVICES, FISCAL AGENT SERVICES, OR ANY
3 OTHER SIMILAR SERVICES.

4 4. "PAYING AGENT AND FISCAL AGENT SERVICES" MEANS THE PAYMENT OR
5 DISBURSEMENT IN NEW YORK BY A FINANCIAL INSTITUTION OF ALL OR ANY
6 PORTION OF PRINCIPAL OR INTEREST ON A BOND, NOTE AND OTHER OBLIGATION
7 ISSUED BY DEBT EVADING FOREIGN STATES.

8 5. "FOREIGN STATE" MEANS ANY GOVERNMENTAL UNIT OTHER THAN THE UNITED
9 STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY OR INSULAR
10 POSSESSION THEREOF, AND INCLUDES A PROVINCE OR POLITICAL SUBDIVISION OF
11 A FOREIGN STATE.

12 6. (A) "DEBT EVADING FOREIGN STATE" MEANS ANY FOREIGN STATE THAT:

13 (I) HAS ONE OR MORE FINAL JUDGMENTS ENTERED AGAINST IT BY ANY STATE OR
14 FEDERAL COURT LOCATED IN NEW YORK, INCLUDING ANY FINAL JUDGMENT
15 ORIGINALLY ISSUED IN A FOREIGN COURT THAT IS FILED OR REGISTERED IN NEW
16 YORK, IN THE COMBINED AMOUNT OF WHICH JUDGMENTS EXCEED ONE HUNDRED
17 MILLION DOLLARS;

18 (II) FAILS TO SATISFY IN FULL ANY SUCH JUDGMENT FOR A PERIOD OF MORE
19 THAN TWO YEARS AFTER THE JUDGMENT BECOMES A FINAL JUDGMENT, REGARDLESS
20 OF WHETHER SUCH JUDGMENT BECAME A FINAL JUDGMENT BEFORE THE DATE OF THE
21 ENACTMENT OF THIS SUBDIVISION; AND

22 (III) IS NOT A FOREIGN STATE ELIGIBLE FOR:

23 (1) FINANCING THROUGH THE INTERNATIONAL DEVELOPMENT ASSOCIATION
24 (UNLESS SUCH STATE IS ELIGIBLE FOR FINANCING FROM THE INTERNATIONAL BANK
25 FOR RECONSTRUCTION AND DEVELOPMENT); OR

26 (2) DEBT RELIEF UNDER THE ENHANCED HIPC INITIATIVE (AS DEFINED IN
27 SECTION 1625(E)(3) OF THE UNITED STATES INTERNATIONAL FINANCIAL INSTI-
28 TUTIONS ACT); OR

29 (3) DEBT RELIEF UNDER THE MULTILATERAL DEBT RELIEF INITIATIVE OF THE
30 INTERNATIONAL MONETARY FUND.

31 (B) FOR PURPOSES OF THIS ARTICLE, REFERENCES TO A 'DEBT EVADING
32 FOREIGN STATE' SHALL INCLUDE 'AGENCY OR INSTRUMENTALITY OF A FOREIGN
33 STATE' AND 'STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE,' AS
34 DEFINED IN THIS SECTION.

35 7. "STATE-OWNED CORPORATION OF A DEBT EVADING FOREIGN STATE" MEANS ANY
36 CORPORATION OR ENTITY (OTHER THAN A NATURAL PERSON), A MAJORITY OF THE
37 SHARES OR OTHER OWNERSHIP INTEREST OF WHICH IS HELD, EITHER DIRECTLY OR
38 INDIRECTLY, BY A DEBT EVADING FOREIGN STATE OR BY AN AGENCY OR INSTRU-
39 MENTALITY OF A DEBT EVADING FOREIGN STATE.

40 8. "STATE" MEANS EACH OF THE SEVERAL STATES, THE DISTRICT OF COLUMBIA,
41 AND ANY COMMONWEALTH, TERRITORY OR POSSESSION OF THE UNITED STATES.

42 S 331. IMPOSITION OF TAX. 1. THERE IS HEREBY IMPOSED AND SHALL BE PAID
43 A TAX ON EACH PROVISION IN NEW YORK OF INITIAL PAYING AGENT SERVICES OR
44 FISCAL AGENT SERVICES BY A FINANCIAL INSTITUTION TO A DEBT EVADING
45 FOREIGN STATE.

46 2. THE TAX IMPOSED SHALL BE AT A RATE OF FOUR PERCENT OF THE GROSS
47 AMOUNT DISBURSED BY THE FINANCIAL INSTITUTION IN RELATION TO AND AT THE
48 TIME OF EACH PROVISION OF SUCH SERVICE.

49 3. THE ULTIMATE INCIDENCE OF AND LIABILITY FOR THE TAX SHALL BE UPON
50 THE DEBT EVADING FOREIGN STATE ON BEHALF OF WHICH SUCH PAYING AGENT
51 SERVICE OR FISCAL AGENT SERVICE IS PROVIDED. EACH FINANCIAL INSTITUTION
52 THAT PROVIDES THE INITIAL PAYING AGENT OR FISCAL AGENT SERVICES IN NEW
53 YORK WITH RESPECT TO ALL OR ANY PORTION OF AN INTEREST OR PRINCIPAL
54 PAYMENT ON BEHALF OF A DEBT EVADING FOREIGN STATE SHALL BE RESPONSIBLE
55 FOR THE COLLECTION OF THE TAX FROM SUCH DEBT EVADING FOREIGN STATE ALLO-
56 CABLE TO THE GROSS AMOUNT OF FUNDS IT DISBURSES AND FOR THE REMISSION OF

1 THE TAX TO THE TAX COMMISSION. IN THE EVENT A FINANCIAL INSTITUTION
2 DISBURSES ANY FUNDS IN RELATION TO THE PROVISION OF A PAYING AGENT
3 SERVICE OR FISCAL AGENT SERVICE WITHOUT REMITTING THE TAX IMPOSED BY OR
4 PURSUANT TO THIS ARTICLE TO THE TAX COMMISSION, SUCH FINANCIAL INSTITU-
5 TION SHALL BE LIABLE FOR THE FULL AMOUNT OF SUCH TAX IMPOSED WHICH SHALL
6 BE IMMEDIATELY DUE AND PAYABLE TO THE TAX COMMISSION.

7 S 332. REPORTS AND ADDITIONAL MEASURES. 1. THE DEPARTMENT SHALL, ON A
8 MONTHLY BASIS, REVIEW THE RECORDS OF UNSATISFIED JUDGMENTS ENTERED IN
9 ALL FEDERAL AND STATE COURTS LOCATED IN THIS STATE TO IDENTIFY ALL DEBT
10 EVADING FOREIGN STATES.

11 2. THE DEPARTMENT SHALL, ON A MONTHLY BASIS, POST TO ITS WEBSITE THE
12 IDENTITIES OF ALL DEBT EVADING FOREIGN STATES OR OTHERWISE PUBLISH SUCH
13 IDENTITIES IN ANY OTHER MANNER REASONABLY CALCULATED TO GIVE NOTICE TO
14 FINANCIAL INSTITUTIONS IN NEW YORK. ANY FINANCIAL INSTITUTION SUBJECT
15 TO THIS ARTICLE SHALL HAVE THE ABSOLUTE RIGHT TO RELY UPON THE LIST OF
16 DEBT EVADING FOREIGN STATES POSTED OR PUBLISHED BY THE DEPARTMENT FOR
17 THE PURPOSE OF COMPLYING WITH THIS ARTICLE.

18 3. THE DEPARTMENT SHALL REPORT TO THE OFFICE OF THE NEW YORK ATTORNEY
19 GENERAL THE NAMES OF ANY FINANCIAL INSTITUTIONS THAT THE DEPARTMENT
20 DETERMINES IS NOT COMPLYING WITH THIS ARTICLE.

21 4. THE DEPARTMENT AND THE ATTORNEY GENERAL MAY CONSIDER DOCUMENTS AND
22 OTHER INFORMATION RECEIVED FROM THIRD PARTIES, FINANCIAL INSTITUTIONS
23 AND DEBT EVADING FOREIGN STATES TO DETERMINE WHETHER A FOREIGN STATE IS
24 A DEBT EVADING FOREIGN STATE.

25 5. AT SUCH TIME AS THE DEPARTMENT DETERMINES THAT A FOREIGN STATE NO
26 LONGER QUALIFIES AS A DEBT EVADING FOREIGN STATE, IT SHALL REMOVE FROM
27 ITS WEBSITE THE DESIGNATION OF THE FOREIGN STATE AS A DEBT EVADING
28 FOREIGN STATE OR TAKE SUCH OTHER ACTION AS IS REASONABLY CALCULATED TO
29 GIVE NOTICE TO FINANCIAL INSTITUTIONS IN NEW YORK THAT SUCH FOREIGN
30 STATE IS NO LONGER DESIGNATED AS A DEBT EVADING FOREIGN STATE.

31 S 2. The tax law is amended by adding a new section 1816 to read as
32 follows:

33 S 1816. ATTEMPT TO EVADE OR DEFEAT CERTAIN TAXES. ANY FINANCIAL INSTI-
34 TUTION THAT WILLFULLY ATTEMPTS IN ANY MANNER TO EVADE OR DEFEAT ANY TAX
35 IMPOSED BY OR PURSUANT TO ARTICLE FIFTEEN OF THIS CHAPTER OR THE PAYMENT
36 THEREOF SHALL, IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, BE GUILTY
37 OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN TEN THOUSAND
38 DOLLARS PER OCCURRENCE.

39 S 3. This act shall take effect on the thirtieth day after it shall
40 have become a law and shall apply to any disbursement of funds in
41 connection with the provision of a paying agent service or fiscal agent
42 service occurring on or after such effective date.